

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JASON DISISTO,

Plaintiff,

-v-

THE CITY OF NEW YORK, New York City Police  
Department (“NYPD”) Officer (“P.O.”) JONATHAN  
MUNOZ (Shield No. 20918), P.O. EDWIN FLOREZ  
(Shield No. 22262) and P.O. DANIEL CROSS, (Shield No.  
2635), in their individual capacities,

Defendants.  
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**ANSWER TO CROSS-  
CLAIMS MADE BY MUNOZ,  
FLORIEZ, AND CROSS  
ON BEHALF OF THE CITY  
OF NEW YORK**

15-CV-3296 (GHW)

Jury Trial Demanded

Defendant City of New York (“City”), by its attorney, Zachary W. Carter,  
Corporation Counsel of the City of New York, for its answer to the cross-claims of defendants  
Jonathan Munoz, Daniel Cross, and Edwin Florez respectfully alleges, upon information and  
belief, as follows:

1. Defendant City repeats and realleges each and every paragraph of its  
Answer to the Amended Complaint dated October 26, 2105, as if fully set forth herein, including  
all affirmative defenses set forth therein.

2. Denies the allegations set forth in cross-claim “1” (§ 84) in the Answer to  
the Amended Complaint with Cross-Claims by Munoz and Cross.

3. Denies the allegations set forth in cross-claim “2” (§ 85) in the Answer to  
the Amended Complaint with Cross-Claims by Munoz and Cross.

4. Denies the allegations set forth in cross-claim “3” (§ 86) in the Answer to  
the Amended Complaint with Cross-Claims by Munoz and Cross.

5. Denies the allegations set forth in cross-claim “4” (¶ 87 and the second ¶¶ 65 and 66) in the Answer to the Amended Complaint with Cross-Claims by Munoz and Cross.

6. Denies the allegations set forth in cross-claim “1” (¶ 84) in the Answer to the Amended Complaint with Cross-Claims by Florez.

7. Denies the allegations set forth in cross-claim “2” (¶¶ 85-86) in the Answer to the Amended Complaint with Cross-Claims by Florez.

8. Denies the allegations set forth in cross-claim “3” (¶ 87-89) in the Answer to the Amended Complaint with Cross-Claims by Florez.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO THE CROSS-CLAIMS:**

9. The cross-claims fail to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO THE CROSS-CLAIMS:**

10. Defendant City has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has defendant violated any act of Congress providing for the protection of civil rights.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO THE CROSS-CLAIMS:**

11. At all times relevant to the incident, defendant City of New York acted reasonably in the proper and lawful exercise of its discretion.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE TO THE CROSS-CLAIMS:**

12. To the extent defendants Munoz, Cross, and Florez assert state law claims against the City of New York, such claims should be barred by the doctrine of immunity for judgmental errors in the exercise of governmental functions.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE TO THE CROSS-CLAIMS:**

13. Defendants Munoz, Cross, and Florez may have been acting in violation of the rules and regulations of the New York City Police Department at the time of the incident giving rise to the instant case.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE TO THE CROSS-CLAIMS:**

14. Defendants Munoz, Cross, and Florez's cross-claims against defendant City are not ripe for adjudication.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE TO THE CROSS-CLAIMS:**

15. This Court lacks subject matter jurisdiction over defendants Munoz, Cross, and Florez's cross-claims.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE TO THE CROSS-CLAIMS:**

16. Any injury alleged to have been sustained by plaintiff was not the proximate result of conduct on the part of defendant City of New York and resulted in whole or in part from the culpable, negligent and/or intervening conduct of defendants Munoz, Cross, and Florez.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE TO THE CROSS-CLAIMS:**

17. Defendants Munoz, Cross, and Florez's cross-claims may be barred in part by the doctrines of res judicata and/or collateral estoppel.

**WHEREFORE,** defendant City requests judgment dismissing the amended complaint and Munoz, Cross, and Florez's cross-claims in their entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
November 16, 2015

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By:                     /s/                      
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